

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHRISTOPHER SADOWSKI,

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Plaintiff,

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v.

Civil Action No. 4:17-cv-01562

BACKCHINA, LLC d/b/a
WWW.21USCITY.COM

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Defendants.

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Jury Demand

DECLARATION OF NILI “LILY” JIN

1. My name is Nili “Lily” Jin. I am over the age of 21. I have never been convicted of a felony, and I have personal knowledge of the facts contained herein, which are true and correct. If called as a witness, I could competently testify to these statements.

2. I am the co-owner of www.21uscity.com (“Backchina”). My responsibilities at Backchina include administrative, HR, and financial management. I manage through assisting the CEO to develop and carry out business plans, recruiting editors and reporters, monitoring and evaluation of the performance of the website. I manage over two editors and web design professionals.

3. BackChina is a news reporting platform. Our employees generate news stories through the following primary channels:

- a. Original drafting of a news article or generation of a photograph;
- b. Commenting on news articles produced from other sources;

- c. Transforming news articles from other sources by generating original news articles, modifying photographs, and embedding links with copyright known notations;
- d. Reprinting articles that other websites or authors encourage our website to reprint, provided the source of the article is identified;
- e. News exchange with other websites; and,
- f. Translating English articles to Chinese, summarizing relevant stories and generating new articles.

4. Individuals accessing BackChina's website may also post news articles, blogs, photographs and other content through social media such as forum threads and posts.

5. We take great care to ensure that BackChina is not violating other's copyright rights through the news articles it runs on its webpage at www.21uscity.com ("Website"). Our Website includes a specific paragraph referring users to notify our webmaster of any potential copyright issues. We remove all images that we are notified are potentially violating another's copyright. The notice is at the bottom of the Website.

6. BackChina's news reporting platform targets a Chinese news audience, an audience well known for not reading lengthy news stories, especially from U.S. or Canadian local news sources. As such, BackChina's publications are written in Chinese to convey the who, what, when, why and where of a story.

7. I was surprised when we received a letter from the Higbee law firm, Mr. Sadowski's attorneys, on or about December 29, 2016 accusing BackChina of violating his copyright in the photograph in Exhibit A to the Original Complaint ("Sadowski Photograph"). His letter demanded payment of \$2,500.00.

8. After reviewing his letter and comparing it to our publication, we immediately removed the post. I believe that our use is news reporting and comment, and therefore protected, but our policy at BackChina is to avoid costly litigation. We assumed the matter closed after we removed the post.

9. While I did not post the BackChina news story including the Sadowski Photograph, Kevin He and I conducted an investigation into how the BackChina news article was published on our webpage. We determined that a news article was run by the on-line edition of the New York Post on January 25, 2016 at 6:32 am that included the Sadowski Photograph at <http://nypost.com/2016/01/25/mom-and-son-die-of-carbon-monoxide-poisoning-while-dad-clears-snow-off-car/>. A Canadian website, ccreaders.net posted a Chinese commentary on the New York Post article that included the Sadowski Photograph on the same day at 2:01 pm at <http://news.ccreaders.net/us/2016/01/25/1632594.html>. Then, one of our news editors placed the ccreaders.net article on the BackChina webpage, 21uscity.com, that same day at 5:14 pm.

10. BackChina posted BackChina news article to report on the tragedy and dangers caused by carbon monoxide poisoning. This is especially relevant to a Chinese audience as many of our Chinese audience have poor English skills. A lot of them have never driven a car before they come to US. Therefore, they have very limited knowledge on cars and do not know the dangers of carbon monoxide generated by cars. This news reported in Chinese can educate them to avoid similar tragedy.

11. The text accompanying the Sadowski Photograph in the BackChina news article was modified from the New York Post news article to target a Chinese audience. The article was rewritten as a short factual summary of what was depicted in the picture.

12. A Chinese news audience is interested in the who, what, when, why and where of a story and not likely to read lengthy local news stories.

13. On or about May 26, 2017, I authorized my lawyer, William P. Ramey, III, of the law firm Ramey & Schwaller, LLP, to send a letter responding to the December 29, 2016 letter.

14. However, BackChina was sued for copyright infringement on or about May 22, 2017. BackChina was served shortly thereafter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 11, 2017.

A handwritten signature in black ink, appearing to read "Lily Jin".

Lily Jin

(name)